

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WRI GOLDEN STATE, LLC,

No. C-07-1480 MMC

Plaintiff,

**ORDER DENYING WRI'S MOTION TO
DISMISS COUNTERCLAIM**

v.

SAVE MART SUPERMARKETS,

Defendant

WRI has moved to dismiss SAVE MART's counterclaim for declaratory relief for failure to join Wal-Mart as a required party. WRI argues that SAVE MART is attempting to prevent or limit the operation of the proposed Wal-Mart store by seeking declaratory relief to enforce its contractual rights against WRI. If Save Mart succeeds, WRI says, Wal-Mart's interest will be impaired.

WRI's motion is without merit. First, it is well-settled that "[a] nonparty to a commercial contract ordinarily is not a necessary party to an adjudication of rights under the contract." *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1044 (9th Cir. 1983 (citing cases). Second, Wal-Mart, which undoubtedly is aware of the controversy, has not chosen to intervene as it would be entitled to do under F.R. Civ. P. 24(a)(2) if it thought that "the disposition of [this] action may as a practical matter impair or impede [its] ability to protect that interest." *United States v. San Juan Bay Marina*, 239 F.3d 400, 406-07 (1st Cir.

1 2001), stating

2 "Since its decision to forgo intervention indicates that the Commonwealth
3 does not deem its own interest substantially threatened by the litigation, the
4 court should not second-guess this determination, at least absent special
5 circumstances."

6 The motion is denied.

7 **IT IS SO ORDERED.**

8 Dated: June 24, 2008

9 /s/ William W Schwarzer
10 WILLIAM W SCHWARZER
11 United States District Judge
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